



October 24, 2002

Ms. Lisa A. Brown
Bracewell & Patterson L.L.P.
711 Louisiana Street, Suite 2900
Houston, Texas 77002-2781

OR2002-6039

Dear Ms. Brown:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 171170.

The San Jacinto College District ("district") received a request for the requestor's personnel file and "a copy of all documents and records concerning the complaints of [a certain individual] against the San Jacinto College Community College District and me." You state that some of the requested information has been released to the requestor. You claim that most of the submitted information is excepted from disclosure under sections 552.101, 552.103 and 552.107 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Section 552.103(a), the "litigation exception," excepts from disclosure information relating to litigation to which the state or a political subdivision is or may be a party. The district has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation was pending or reasonably anticipated on the day the governmental body received the request for information, and (2) the information at issue is related to that litigation. *See University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.--Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210,

¹In a note attached to the submitted information, you explain that the district does not contend that certain university policies are excepted from disclosure. Therefore, this letter ruling does not address that portion of the submitted information.

212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). The district must meet both prongs of this test for information to be excepted under section 552.103(a).

The mere chance of litigation will not trigger section 552.103(a). *See* Open Records Decision No. 452 at 4 (1986). To demonstrate that litigation is reasonably anticipated, the governmental body must furnish concrete evidence that litigation involving a specific matter is realistically contemplated and is more than mere conjecture. *Id.* Whether litigation is reasonably anticipated must be determined on a case-by-case basis. *See* Open Records Decision No. 452 at 4 (1986). This office has stated that a pending Equal Employment Opportunity Commission ("EEOC") complaint indicates litigation is reasonably anticipated. *See* Open Records Decision Nos. 386 at 2 (1983), 336 at 1 (1982).

You indicate that the complainant referred to in the instant request has filed a complaint against the district with the EEOC and that this complaint is still pending. Based on your representations and our review of the submitted information, we agree that the submitted information relates to pending litigation.

Generally, once information has been obtained by all parties to the pending litigation, no section 552.103(a) interest exists with respect to that information. *See* Open Records Decision No. 349 at 2 (1982). Thus, information that has either been obtained by or provided to all parties to the pending litigation cannot be excepted by section 552.103(a). You explain and the submitted documents reflect that "Exhibit D" consists of written communications between the parties in the instant EEOC complaint. Therefore, no section 552.103(a) interest exists with respect to "Exhibit D." Thus, with the exception of "Exhibit D," we find that the submitted information may be withheld under section 552.103.²

We note, however, that "Exhibit D" contains e-mail addresses obtained from the public. Section 552.137 makes certain e-mail addresses confidential. Section 552.137 provides:

- (a) An e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under this chapter.
- (b) Confidential information described by this section that relates to a member of the public may be disclosed if the member of the public affirmatively consents to its release.

Gov't Code §552.137. You do not inform us that a member of the public has affirmatively consented to the release of any e-mail address contained in "Exhibit D." The district must

²We note that the applicability of section 552.103(a) ends when the litigation is concluded. *See, e.g.,* Attorney General Opinion MW-575 at 2 (1982); Open Records Decision Nos. 350 at 3 (1982), 349 at 2 (1982).

therefore withhold the e-mail addresses we have marked under section 552.137. Since you do not raise other exceptions with regard to "Exhibit D," we find that you must release the remainder of this exhibit to the requestor.

In summary, you must withhold the e-mail addresses we have marked in "Exhibit D" under section 552.137. The rest of "Exhibit D" must be released to the requestor. The remainder of the submitted information may be withheld per section 552.103.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, *no writ*).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or

complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Jon Tate Self", written over a horizontal line.

Jon Tate Self
Assistant Attorney General
Open Records Division

JTS/seg

Ref: ID# 171170

Enc. Submitted documents

c: Dr. Dan Allen
25911 Lake Lawn Drive
The Woodlands, Texas 77380
(w/o enclosures)